

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS DARRELL SCROGGINS,

Defendant-Appellant.

UNPUBLISHED

October 24, 2006

No. 264177

Oakland Circuit Court

LC No. 2005-200719-FH

Before: Cavanagh, P.J., Bandstra and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of assaulting, resisting, or obstructing a police officer, MCL 750.81d, and one count of refusing fingerprints, MCL 28.243a. He was sentenced as a second habitual offender, MCL 769.10, to concurrent terms of one to three years' imprisonment for the assaulting, resisting or obstructing convictions and 90 days in jail for the refusing fingerprints conviction. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions arise from his conduct during an arrest for domestic violence at a motel. The police arrived after the motel manager, Charles Stringfield, reported a disturbance in one of the rooms.

On appeal, defendant argues that the prosecutor improperly vouched for Stringfield's credibility at trial. Because defendant did not object to the prosecutor's remarks at trial, he failed to preserve this issue for appeal. Therefore, our review is limited to plain error affecting defendant's substantial rights. *People Carines*, 460 Mich 750; 597 NW2d 130 (1999); *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000), abrogated on other grounds in *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004).

The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). It is impermissible for a prosecutor to vouch for the credibility of a witness by implying that he has some special knowledge of the witness's truthfulness. *Id.* at 455. But a prosecutor may argue from the evidence that a witness is credible. *Schutte, supra* at 722. "The credibility of a witness is determined by more than words and includes tonal quality, volume, speech patterns, and demeanor, all giving clues to the factfinder regarding whether a witness is telling the truth." *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998).

Contrary to defendant's argument on appeal, the prosecutor's remarks did not imply that the prosecutor had independent or special knowledge that Stringfield was credible. The prosecutor commented on Stringfield's apparent nervous demeanor on the witness stand. The prosecutor asked the jury to consider credibility and common sense, and suggested that someone who comes into court to give truthful testimony is nervous. Defendant has not demonstrated that the prosecutor's remarks were improper.

We also reject defendant's related claim that defense counsel's failure to object to the prosecutor's remarks constituted ineffective assistance of counsel. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000); *Thomas, supra* at 456. Because the remarks were not improper, defense counsel was not ineffective for failing to object. Defense counsel need not make futile objections. *Id.* at 457.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens